



ADMINISTRATIVE SERVICES DEPARTMENT

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CITY COUNCIL STAFF REPORT

Meeting: SEPTEMBER 15, 2020

Subject

Authorizing the sale and delivery of 2020A Certificates of Participation ("Certificates") to refinance outstanding Certificates of Participation (2012 Refinancing Project) ("2012 Certificates" or "Refunded Certificates") for debt service savings and authorizing related documents and actions.

Recommended Action

Adopt Resolution No. _____ of the City Council of the City of Cupertino authorizing the sale and delivery of 2020A Certificates of Participation in a principal amount not to exceed \$27 million, authorizing execution and delivery of certain documents relating thereto, and directing certain actions in connection therewith.

Discussion

The City previously executed and delivered its \$43.940 million 2012 Certificates, which are currently outstanding in the amount of \$27.010 million, have interest rates ranging from 3.000% to 3.125%, and a final maturity of July 1, 2030. The 2012 Certificates can be currently refunded on any date without premium. Municipal bond rates are currently near historical lows. The City has determined that refinancing the 2012 Certificates for debt service savings will provide a public benefit to the City and its residents by reducing annual debt service payments through 2030, reducing the cost of the public capital improvements refinanced using the proceeds of the Refunded Certificates.

In order to facilitate the sale and delivery of the Certificates, the City will lease certain real property consisting generally of City Hall, Administrative Offices, Cupertino Community Hall/Council Chambers, Senior Center, and Quinlan Community Center properties and the existing improvements thereon (the "Leased Premises"), to the Cupertino Public Facilities Corporation (the "Corporation") under a **Site Lease** in consideration of the payment of an upfront rental payment; and the Corporation will sublease the Leased Premises back to the City under a **Lease Agreement** in consideration of the agreement by the City to pay semiannual lease payments (the "Lease Payments").

The Corporation will assign its right to receive the Lease Payments to The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"), under an **Assignment**

Agreement. In consideration of such assignment, the Trustee will execute and deliver not-to-exceed \$27 million aggregate principal amount of Certificates, each evidencing a direct, undivided fractional interest in the Lease Payments, the proceeds of which will be applied to refinance the 2012 Certificates, as provided in a **Trust Agreement** among the Corporation, the City, and the Trustee, and an **Escrow Agreement** between the City and The Bank of New York Mellon Trust Company, N.A., as escrow agent (the “Escrow Agent”).

In order to execute the sale and delivery of the Certificates, City staff has been working with Urban Futures, Inc., as its Municipal Advisor, Stradling Yocca Carlson & Rauth, a Professional Corporation, as its Special Counsel and Disclosure Counsel, and Stifel, Nicolaus & Company, Incorporated, as the Underwriter of the Certificates.

Municipal Advisor

Local governments retain a Municipal Advisor to assist in the structuring and issuance of bonds/certificates either through a competitive or negotiated sale process. The Municipal Advisor represents the City, and only the City, in the sale of bonds/certificates, and works as an extension of staff with a specialty focus on the proposed financing and has an explicit fiduciary duty to their government clients. The Municipal Advisor will make recommendations as to the structure, timing and terms of the bonds, reviews all fees and expenses, coordinates the financing team, drafts the rating presentation, advises the City on the pricing of the bonds/certificates, and reviews and comments on all documents. Urban Futures, Inc., was selected by City staff to serve as its municipal advisor based on the firm’s qualifications and its prior work with the City.

Special Counsel and Disclosure Counsel

Special Counsel works directly for the Issuer and has specialized experience in municipal financings. Special Counsel drafts the bond/certificate documents, ensures that all legal requirements critical to the validity and tax-exempt status of the bonds are satisfied, and will issue a written opinion. Special Counsel often serves as Disclosure Counsel for the issue. Disclosure Counsel, with the input of City staff, drafts the official statement and the continuing disclosure agreement and provides disclosure training to the City. Stradling Yocca Carlson & Rauth was selected by City staff to serve as Special Counsel and Disclosure Counsel based on and RFP process conducted by Urban Futures.

Stradling Yocca Carlson & Rauth represents the Underwriter in other transactions unrelated to the Cupertino financing. This situation raises the potential for divided loyalty and impairment of independent judgment on the part of the firm. As a result, the California Rules of Professional Conduct require the City to give its informed written consent as a condition of the firm representing the City here. That consent is memorialized in the proposed form of legal services agreement between the City and the firm. City staff do not anticipate any adverse impacts to the City as a result of potential divided loyalty on the part the firm or heightened risk to the City’s confidential information. Among other things, the firm has professional obligations to the City that it is bound to adhere to and

the City has a team made up of staff, the Municipal Advisor, and the City Attorney's Office that together with the firm are advocating for the City's interests. Accordingly, staff requests that the City Council direct the Mayor to give the City's informed written consent through execution of the legal services agreement.

Underwriter

The Underwriter is an investment banking firm that assists in structuring the bonds/certificates, assists the team with the bond rating and credit enhancement process and markets/sells the bonds to potential investors. Stifel, Nicolaus & Company, Incorporated was selected by City staff to serve as the Underwriter on this transaction based on the firm's qualifications.

Staff recommends that the City Council adopt the proposed Resolution that approves all documents and actions needed to authorize the issuance and sale of the Certificates, including appointment of the financing team and the following substantially final form financing documents together with any changes or additions deemed advisable and approved by the Mayor, the City Manager, the Assistant City Manager, the Administrative Services Director, or the other City officers designated in writing by the City Manager:

- Site Lease between the City as lessor and the Corporation as lessee, whereby the City leases the Leased Premises to the Corporation in consideration of the payment by the Corporation to the City of an upfront rental payment which is sufficient to enable the City to refinance the 2012 Certificates and to pay related financing costs.
- Lease Agreement between the Corporation as lessor and the City as lessee, whereby the Corporation subleases the Leased Premises back to the City in consideration of the payment by the City of semiannual Lease Payments.
- Assignment Agreement between the Corporation and the Trustee, providing for the Corporation's assignment of certain of its rights in the Site Lease and the Lease Agreement, including its right to receive Lease Payments, to the Trustee for the benefit of the Certificate owners.
- Trust Agreement among the City, the Corporation, and the Trustee, whereby the Trustee agrees to execute and deliver the Certificates, and which sets forth the material terms and provisions relating to the Certificates.
- Escrow Agreement between the City and the Escrow Agent containing terms by which the Escrow Agent will hold proceeds of the Certificates on behalf of the owners of the 2012 Certificates to pay and discharge the 2012 Certificates and give proper notice to the owners.

- Termination Agreement among the City, the Corporation, and the Trustee for the 2012 Certificates providing for the termination of the 2012 Site Lease, the 2012 Lease Agreement, and the 2012 Assignment Agreement relating to the 2012 Certificates.
- Certificate Purchase Agreement between the City and the underwriter Stifel, Nicolaus & Company, Inc., pursuant to the terms and provisions of which the Certificates will be sold with a negotiated method of sale, such terms and provisions including the underwriter's discount not to exceed 0.50% of the par amount of the Certificates.
- Preliminary Official Statement pursuant to which the Certificates will be offered for purchase by the public and must contain all facts material to the Certificates and the City (with certain permitted exceptions to be completed in the final Official Statement) and must not omit or misstate any such material facts. The Preliminary Official Statement has been reviewed and approved for transmittal to the City Council by the City's financing team. The distribution of the Preliminary Official Statement by the City is subject to federal securities laws, including the Securities Act of 1933 and the Securities Exchange Act of 1934. These laws require the Preliminary Official Statement to include all facts that would be material to an investor in the Certificates. Material information is information that there is a substantial likelihood would have actual significance in the deliberations of the reasonable investor when deciding whether to buy or sell the Certificates. If the City Council concludes that the Preliminary Official Statement includes all facts that would be material to an investor in the Certificates, it must adopt a resolution that authorizes staff to execute a certificate to the effect that the Preliminary Official Statement has been "deemed final."
- Amended Debt Management Policy that contains general policies regarding the City and its related entities' use and management of debt and has been updated to include continuing disclosure policies and procedures.

If the Resolution is adopted by City Council, sale of the Certificates is expected to be completed on or about the week of October 5th with a delivery/closing date on or about the week of October 26th, at which time the City will receive the proceeds for refinancing the 2012 Certificates.

Sustainability Impact

No sustainability impact.

Fiscal Impact

Assuming S&P's affirmation of the City's AA+ General Fund rating and based on interest rates as of September 1, 2020 (plus a 50 basis point cushion), the sale and delivery of the

Certificates is estimated to result in cash flow savings of approximately \$4.15 million to the General Fund through June 1, 2030. Annual debt service savings is estimated to be approximately \$415,000. Net present value savings is estimated to be approximately \$2.26 million (or 8.36% on \$27.010 million of refunded 2012 Certificates). The estimated savings are net of all financing costs and will benefit the City's General Fund.

In accordance with California Government Code Section 5852.1, good faith estimates are provided with respect to the Certificates in Exhibit A.

Prepared by: Kristina Alfaro, Director of Administrative Services

Reviewed by: Dianne Thompson, Assistant City Manager

Approved for Submission by: Deborah Feng, City Manager

Attachments:

A – Exhibit A: Good Faith Estimates

B – Resolution No. _____

C – Site Lease

D – Lease Agreement

E – Memorandum of Lease Agreement

F – Assignment Agreement

G – Trust Agreement

H – Escrow Agreement

I – Termination Agreement

J – Certificate Purchase Agreement

K – Preliminary Official Statement

L – Amended Debt Management Policy